IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

WRIT PETITION NO.339 OF 1990

M.S. E. B. Officers' Association & Ors. ...Petitioners.

Versus

Maharashtra State Electricity Board & Ors. ...Respondents.

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Mr. C. U. Singh with Ms.Tara Desai i/b. Ms. Pallavi Desai for the Petitioners.
Mr.C . J.Sawant, Senior Advocate with Mr. Prashant Chavan i/b. M/s. Little & Co. for Respondent No.1.
Mr. S. M. Dharap for Respondent No.3.
Dr. R. S. Kulkarni i/b. Mr. Abhay Kulkarni for Respondent No.5.
Mr. R. J. Mane, AGP for Respondent No.7.

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CORAM : DALVEER BHANDARI, C.J., &
DR. D.Y. CHANDRACHUD, J.

Date of reserving judgment : April 19, 2005.

Date of pronouncement of judgment: July 20, 2005.

JUDGMENT (PER DR.D. Y. CHANDRACHUD, J.).:

I

The First Petitioner before the Court, in these proceedings under Article 226 of the Constitution, claims to represent Officers of the Maharashtra State Electricity Board in the non-technical category, namely, (i) Deputy Establishment Officers, Accounts Officers and Assistant Personnel Officers; (ii) Labour Officers; and (iii) Divisional Accountants and Establishment Superintendents; and their equivalents. In substance, the plea in the petition is for wage parity with employees borne on the technical cadre such as (i) Deputy Executive Engineers; (ii) Assistant Engineers; (iii) Junior Engineers; and (iv) Sub Engineers. Amongst the reliefs that have been sought are: (i) A declaration that the settlements which were entered into by MSEB on 29th January 1990, 16th November 2000 and 10th January 2001 with several Unions do not bind the First Petitioner; (ii) A writ of Mandamus directing MSEB to grant to those officers in the non-technical cadre specified in Exhibit 'M' to the petition, the same pay

scales and service conditions as are given to Assistant Engineers; (iii) A writ of Mandamus for the grant of the same pay scale and service conditions to non-technical officers in Class-I specified in Exh.N to the Petition as are granted to Deputy Executive Engineers.

Having heard Counsel appearing on behalf of the contesting parties, we have arrived at the conclusion that the reliefs which have been sought, cannot be granted for the reasons which we now proceed to elucidate.

II

2. Maharashtra State Electricity Board was established by the Government of Maharashtra under Section 5 of the Electricity Supply Act, 1948, with a view to carry on the activity of generating, transmitting and distributing electrical energy throughout the State. The Board established Power Stations and Sub Stations and has had Circle Offices and Divisional Offices throughout the State. The Board employs over one lakh persons. The employees of the Board are represented by the diverse Unions and Federations with whom the Board negotiates wages and service conditions. The conditions of

service of those employees who are "workmen" under Section 2(s) of the Industrial Disputes Act, 1947, are governed by industrial settlements. Section 79(3) of the Electricity Supply Act, 1948, empowers the Board to frame regulations governing salaries, allowances and conditions of service of employees. The First Respondent has framed, from time to time, service regulations in exercise of its statutory powers.

3. According to the Petitioners, in 1965, the First Respondent appointed Shri B. S. Kalelkar, a retired District Judge as an Arbitrator to decide upon the pay scales of its employees. It has been claimed that though the technical staff had sought better pay scales than the non-technical staff, the Arbitrator maintained parity. In 1979, the technical staff is reported to have commenced an agitation demanding separate pay scales upon which an agreement was stated to have been arrived at on 19th March 1981 with the Subordinate Engineers' Association by which the First Respondent agreed to evolve a separate wage structure for Engineers. On 24th

April 1982, the First Respondent entered into an agreement with the Subordinate Engineers' Association by which a separate wage structure came to be allowed to the technical staff. According to the Petitioners, the issue was taken up with the First Respondent in the light of certain assurances which were held out by successive Ministers in charge of the Energy Portfolio and at one of the meetings held on 25th March 1983, it was stated that the matter had been referred to the State Government for decision. The question of wage revision was taken up in 1987 and on 29th January 1990, a fresh settlement was arrived at in regard to the wages and other conditions of service. According to the Petitioners, the higher pay scales that have been allowed to technical staff are not based on rational criteria and the parity between the technical and non-technical staff was disturbed without any valid basis. Clause 2 of the Settlement inter alia laid down that in case, any of the pay scales covered by the settlement were further revised during the period of the settlement, all the remaining pay scales shall also be revised proportionately.

4. During the pendency of these proceedings, the petition came to be amended. By the amendment, it is averred that on 28th May 1966, Government of India in the Ministry of Labour constituted a Central Wage Board for Electricity Undertakings in India: The Wage Board was (i) To determine the categories of employees, manual, clerical, supervisory etc. who should be brought within the scope of wage fixation; and (ii) To work out a wage structure based on the principle of fair wages as set forth in the report of the Committee on Fair Wages. The Wage Board made a study of job categories in five Electricity Undertakings including Gujarat State Electricity Board. According to the Petitioners, GSEB and the First Respondent were both created out of the erstwhile Bombay State Electricity Board. The Wage Board is stated to have standardised nomenclatures of employees and officers and these standardised nomenclatures were assigned both to technical and non-technical employees. The Board assigned ratings to the job categories of technical and non-technical employees and on the basis of the points which were scored categorised technical and non-technical employees in categories.

The recommendations of the Wage Board are stated to have been accepted by the First Respondent, though with modification, on 23rd November 1970. According to the Petitioners, in the settlement which was entered into on 21st November 1970, a parity between the technical and non-technical staff was maintained. This parity was, according to the Petitioners, disturbed in the settlement of 24th April 1982 and that continued in the settlements entered into on 29th January 1990, 28th December 1995, 16th November 2000 and in an administrative order dated 10th January 2001. The disruption of parity is the genesis of the dispute.

III

5. Several affidavits in reply have been filed to these proceedings, inter alia on behalf of the Board and by the Fifth Respondent which is the Subordinate Engineers' Association. MSEB Workers' Federation, Maharashtra Vij Kamgar Mahasangh, Maharashtra State National Electrical Workers' Federation and Tantrik Kamgar Union are also impleaded as party Respondents to

these proceedings.

6. In the affidavit in reply which was filed by the Board on 23rd February 1996, it is submitted that employees of the technical wing and those in the non-technical wing form two separate and distinct classes. In so far as the settlement of 29th January 1990 is concerned, it was submitted that the members of the First Petitioner have accepted the benefits accruing thereunder, although some of them did so under protest. It was urged that the settlement since expired in 1993 and no question could arise of the striking down of the settlement or clause 2 thereof as this would lead to a disturbance of industrial peace and harmony. It was urged that a parity between the technical and non-technical staff was not a rule of any industrial establishment much less with the First Respondent. The settlement of 1982 was initially signed between the First and Fifth Respondents after the then Chief Minister to whom the proceedings were referred, gave an award on scales of pay and other allied matters concerning the technical members of the staff of the First Respondent. In its

affidavit dated 8th April 2002, the State Government inter alia averred that the Board is empowered to appoint officers under the Electricity Supply Act, 1948 and it is hence the responsibility of the Board to fix wage scales.

7. The Subordinate Engineers' Association which is impleaded as the Fifth Respondent, has joined issue on the claim which has been asserted by the Petitioners in these proceedings in its affidavit dated 19th April 2002. According to the Fifth Respondent, the job content in the categories of technical and non-technical officers of the Board is qualitatively and quantitatively different. According to the Fifth Respondent, while the working hours for technical officers are 48 hours per week, those for non-technical officers are 39 hours per week. The technical staff is required to work in the open environment in adverse conditions as distinguished from the non-technical officers who work in administrative establishments. The Technical Officers, it is urged, have to work in shifts in adverse conditions involving pollution, dust, noise and high voltage radiation. The non-technical

officers are stated to have additional leave. As a result of these differences, there was, it was stated, an unrest within the technical staff and ultimately the Board agreed to grant a separate and independent wage structure to the technical staff on 19th March 1979. An award was made by the then Chief Minister on 24th April 1982 on the basis of which a settlement was arrived at on 5th May 1982. According to the Fifth Respondent, the Kalelkar Award did not anywhere contain a reference to parity of pay scales between the technical and non-technical staff.

8. A further affidavit was filed on behalf of the First Respondent on 2nd May 2002, after the petition came to be amended, in which it was stated that after the report of the Wage Board, MSEB negotiated on pay revision with the three Federations which were the only Unions representing all the categories of employees at the relevant point of time. A settlement was signed in 1970 under which common pay scales were offered to different categories of employees on the non-technical side, technical side and the Engineering side.

Thereafter, a fresh settlement was entered into in 1976 for the period 1-4-1974 to 31-3-1979. The Fifth Respondent which came into existence in 1970, did not agree to the wage scales which were finalised in 1976. After negotiation with the First Respondent, the Board granted increments to certain categories of Engineers over and above the agreed wage structure. An MOU was entered into with the Fifth Respondent on 19th March 1979 under which "it was agreed to grant a separate wage structure based on some relevant factors and separate negotiations" with the Fifth Respondent. The Fifth Respondent agitated its demand for a separate wage structure for the technical staff which resulted in an award of the Chief Minister, followed by a settlement of 5th May 1982. There was no parity between the technical and the non-technical staff with effect from 1st April 1980. A reference has been made thereafter in the affidavit to the subsequent revisions which took place on 29th January 1990, 28th December 1995 and 16th November 2000. In so far as the recommendations of the Central Wage Board are concerned, it has been stated that those recommendations were not accepted in

entirety, but were modified by MSEB when settlements were arrived at after negotiations with the Unions.

9. In an affidavit dated 8th September 2004 filed on behalf of the Fifth Respondent in these proceedings, it has been submitted that a claim for parity is not established on the basis of the report in 1969 of the Central Wage Board for Electricity Undertakings. The terms of reference required the Wage Board to determine the categories of employees – manual, supervisory, clerical etc.– who should be brought within the scope of proposed wage fixation. While dealing with this item of the terms of reference, it has been submitted that the Wage Board categorically stated that it would cover only those employees who fell within the definition of the expression "workman" under Section 2(s) of the Industrial Disputes Act, 1947. The observations of the Wage Board which have been extracted in the affidavit may be conveniently reproduced here for purposes of reference :

"Categories of employees covered. - The terms of reference

> of this Board left the question of determining the categories of employees to be covered by its recommendations to be decided by the Board. Para 3(a) of the Resolution constituting the Board reads as follows :
>
> "The following will be the terms of reference of the Board:- to determine the categories of employees (manual, clerical, supervisory etc.) who should be brought within the scope of the proposed wage fixation".
>
> This question was taken up by the Board at several of its initial meetings and the Board decided that the word "employees" mentioned in the Resolution constituting the Wage Board should be taken to apply to all workers who are covered by the definition of "workman" as given under Section 2(s) of the Industrial Disputes Act, 1947 and who are drawing a salary upto Rs.750/- p.m."

In the circumstances, it has been submitted that the Petitioners and the employees to whom they represent stood outside the coverage of the Wage Board. In so far as point rating by the Wage Board is concerned, para 5.9 of the report which is in the following terms, has been relied upon:

> "The range of points within which a particular category would fall, will differ from one undertaking to another to some extent, depending on the organisational structure of such undertaking. For this reason, the point rating of the various categories in different undertakings cannot be

> directly compared. Also, since the plans for evaluation in the case of two classifications of employees are basically different and since even in the same classification, the approach to the evaluation differs between the supervisory and non-supervisory groups, the point rating under the four groups of the two classifications cannot be directly compared. Therefore, while the points secured will be a general guide in the determination of wages, it is to be cautioned that an attempt should not be made numerically to link, by means of a formula, the points with wages." (emphasis supplied).

IV

10. During the course of the submissions put forth on behalf of the Petitioners, the basic document that has been highlighted is the report of the Central Wage Board. According to the Petitioners, the Wage Board was constituted in order to formulate a wage structure based on the principle of fair wages. The First Respondent requested the Wage Board to undertake job evaluation on scientific lines instead of leaving the question of wage fixation to be settled by negotiations between the Boards and their employees. The Board, it was urged, collected data from five Electricity Undertakings and evolved a point rating method as a scientific basis for comparing job

content of various categories. According to the Petitioners, the report of the Wage Board was accepted by the Central Government and all State Electricity Boards were called upon to implement its recommendations. Accordingly, the First Respondent issued a resolution on 23rd November 1970 with effect from which a parity of wages was maintained between various categories of employees. It was, according to the Petitioners, as a result of an agitation adopted by the Fifth Respondent that a settlement was arrived at on 5th May 1982 giving separate pay scales to employees constituting the technical staff as a result of which, the parity between the technical and non-technical staff came to be disturbed. It has been submitted that the settlements which were thereafter arrived at commencing from 29th January 1990, continued to disturb the parity. This, it has been urged, is arbitrary.

V

11. In considering the submissions which have been urged on behalf of the Petitioners, two fundamental principles must be borne in

mind. The first relates to the nature of the function of pay fixation and, associated with it, the role of the Court as an arbiter in the exercise of its power of judicial review. The second and equally fundamental issue relates to the content and character of the jurisdiction of the Court, particularly in the exercise of its power under Article 226 of the Constitution over settlements which have been arrived at in the course of collective bargaining between an employer and his workmen.

12. Pay fixation involves, as the Supreme Court held in **State of U.P. vs. J. P. Chaurasia**, (1989) 1 SCC 121, amongst other things, an evaluation of duties and responsibilities. Yet, equivalence between different cadres or between posts within cadres is not predicated upon a simplistic assessment of the nature of work or volume of the work done. As the Supreme Court noted, the functions of two posts may appear to be the same or may look similar, but they may well be differences of degree in performance. The quantity of work may be the same, but its quality may be different. These are not matters

which can be determined merely on the basis of affidavits before the writ Court. Hence it was that the Supreme Court held, that the equation of posts or of pay must be left to the executive and is best determined by experts. A similar view was taken by the Supreme Court in its subsequent decision in **State of Harayana Vs. Jasmer Singh,** (1996) 11 SCC 77. The Supreme Court held that the application of the principle of equal pay for equal work required consideration of various dimensions of a given job. The accuracy required and the dexterity which a job may entail may defer from job to job and must be left for determination and evaluation by an expert body. The Supreme Court held thus:

> "There may be differences in educational or technical qualifications which may have a bearing on the skills which the holders bring to their job although the designation of the job may be the same. There may also be other considerations which have relevance to efficiency in service which may justify differences in pay scales on the basis of criteria such as experience and seniority, or a need to prevent stagnation in the cadre, so that good performance can be elicited from persons who have reached the top of the pay scale. There may be various other similar considerations which may have a bearing on efficient performance in a job."

In **State of U.P. vs. Ministerial Karmachari Sangh,** (1998) 1 SCC 422, the earlier decisions of the Supreme Court were revisited. A reference was made to the decision in **Federation of All India Customs and Central Excise Stenographers vs. Union of India**, (1988) 3 SCC 91, wherein it was held thus :

> "Functions may be the same but the responsibilities make a difference. One cannot deny that often the difference is a matter of degree and that there is an element of value judgment by those who are charged with the administration in fixing the scales of pay and other conditions of service. So long as such value judgment is made bona fide, reasonably on an intelligible criterion which has a rational nexus with the object of differentiation, such differentiation will not amount to discrimination."

13. The second important principle is the importance which industrial law places upon settlements negotiated in the course of collective bargaining. Adjudication, with its formalism, has an adversarial hue. Conciliated outcomes represent practical solutions, those that are accepted by parties in their mutual interest. The sanctity which industrial jurisprudence imparts to settlements is

founded on public policy, an appreciation of the fact that negotiated outcomes are an amalgam of interest based bargaining and legal positions.

14. In **Herbertsons Ltd. vs. Workmen,** AIR 1977 SC 322, the Supreme Court held that when a recognised Union negotiates with an employer, the individual workers do not come into the picture. A recognised Union which is expected to protect the legitimate interest of labour enters into a settlement in the best interests of labour. There may be exceptional cases of mala fides, fraud or even corruption, but prima facie a settlement in the course of collective bargaining is entitled to due weight and consideration. These animating principles also emerge from the judgment of the Supreme Court in **Life Insurance Corporation of India vs. D. J. Bahadur,** (1981) 1 SCC 315 where Mr.Justice V.R. Krishna Iyer speaking for a Bench of three Learned Judges held thus:

> "A bird' seye view of the ID Act reveals the statutory structure and legal engineering centering round dispute settlement in industries according to the rule of law and

> away from fight with fists or economic blackmail. This large canvas once illumined, may illustrate the sweep of awards and settlements by reference to the very agreement of 1974 we have before us. It goes far beyond bonus and embraces a wide range of disputes and rainbow of settlements in a spirit of give and take. One may visualise the bargaining process. Give in a little on bonus and get a better deal on salary scale or promotion prospects; relent a wee-bit on hours of work but bargain better on housing facilities, and so on. The soul of the statute is not contract of employment, uniformity of service conditions or recruitment rules, but conscionable negotiations, conciliations and adjudications of disputes and differences animated by industrial justice, to avoid a collision which may spell chaos and imperil national effort at increasing the tempo of production." (emphasis supplied).

In **Barauni Refinery vs. Indian Oil Corporation Ltd.**, AIR 1990 SC 1801, the Supreme Court held that a settlement that is arrived at in the course of conciliation proceedings with a recognised Union will be binding on all workmen of the establishment even those who belong to a minority Union which has objected to it. Though this is a departure from the ordinary law of contract, the object is to uphold the sanctity of a settlement reached with the active assistance of a Conciliation Officer and to discourage a minority Union in scuttling the

settlement.

VI

15. Applying these principles to the present case, it would, at the outset, be necessary to appreciate that the claim for parity cannot be sustained exclusively on the basis of the report of the Wage Board. The terms of reference of the Wage Board inter alia included (i) a determination of the categories of employees who should be brought within the scope of proposed wage fixation; (ii) working out a wage structure based on the principles of fair wages and (iii) the evaluation of a Gratuity Scheme for the Industry. On behalf of the Fifth Respondent, the attention of the Court has been drawn to the fact that the Wage Board has specifically determined that the word "employees" mentioned in the resolution constituting the Board should be taken to apply to all workers who are covered by the definition of the expression "workman" in Section 2(s) of the Industrial Disputes Act, 1947 and who are drawing a salary of upto Rs.750/- per month. The employees whom the Petitioners represent were outside the

purview of the recommendations of the Wage Board. But that apart, it is also evident from para 5.9 of the report of the Wage Board that while the report laid down point rating, the Board was clearly of the view that the point rating of various categories in different undertakings cannot be directly compared. The Board held that while the points secured will be a general guide in the determination of wages it was to be cautioned that an attempt should not be made numerically to link, by means of a formula, the points with wages. These reasons would warrant the exercise of a great deal of caution before a case of parity in the wages between the technical and non-technical staff is held to have been made out purely on the basis of the report of the Wage Board. Clearly in our view, having regard to the ambit of the terms of reference of the Wage Board, and the recommendations of the Board, no such parity can be directed to be maintained upon a writ of Mandamus of this Court.

16. The Court cannot be unmindful of the circumstance that even according to the Petitioners, there was a disruption in the parity

which was observed between the technical and non-technical staff between 1970 and 1982 when the settlement of 24th April 1982 came to be entered into. This petition was instituted almost eight years thereafter in 1990. During the pendency of the petition, diverse settlements have been entered into between the Board and Unions representing various categories of employees. The settlement of 1982 has been followed by settlements of 1990, 1995 and 2000. Those settlements have enured to the benefit of the employees. In the exercise of the jurisdiction under Article 226 of the Constitution, it is impossible for the Court to arrive at the conclusion that these settlements were either fraudulent or that they were entered into mala fide with a view to causing prejudice to one segment of the workmen. The benefits of the settlement have been received by diverse categories cutting across the entire strata of the staff of the State Electricity Board. In these circumstances, it would neither be appropriate nor proper for the Court to entertain any challenge to the settlements. In fairness, it must be stated that during the course of the submissions before this Court, Counsel appearing on behalf of the

Petitioners urged that the Petitioners do not seek to challenge the settlements at this stage or the benefits that have flowed thereunder to various categories of the staff of the Board. It was, however, urged that the same benefit which was made available to technical categories in terms of wages should be allowed to the non-technical category as well. An exercise of bringing about such equivalence lies outside the domain of the Court exercising jurisdiction under Article 226 of the Constitution. On the material as it stands before the Court, we do not find any justification for doing so. The Board, in our view, is justified in asserting in its submissions that the technical and non-technical staff constitute two different classes; that the qualifications for these posts are different; that the selection of officers represented by the Petitioners is carried out by different procedures and methods than for technical officers; and that where the mode of recruitment, qualifications and channels of promotion are different, equivalence in pay scales cannot be granted.

17. For all these reasons, we do not find that any case for

interference under Article 226 of the Constitution has been made out. The petition shall accordingly stand dismissed. In the circumstances of the case, there shall be no order as to costs.

CHIEF JUSTICE.

DR. D. Y. CHANDRACHUD, J.